IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 377 (S/B) of 2004

1. State of Uttaranchal,
through its Secretary Home Deptt.,
Uttaranchal Sashan, Dehradun

2. Director General of Police,
Uttaranchal, Dehradun

3. Deputy Inspector General of Police
Garhwal Range, Pauri.

4. Superintendent of Police
Pauri Garhwal ... Petitioners

Versus

1. Hargyan Singh
R/o Village Pachokara,
Post Office – Amroha,
District – Jyotibaphule Nagar (U.P.)

2. Public Service Tribunal, Uttaranchal
Dehradun ...Respondents

Mr. B.D. Kandpal, S.C. for the state of Uttaranchal appearing for the petitioners.
Mr. M.C. Pant, Advocate for respondent No. 1

Coram : Hon'ble P.C. Verma, J
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

By means of this writ petition moved under Article 226 of the Constitution of India, the petitioner has sought a writ in the nature of certiorari quashing the judgment and order dated 22.09.2004 (Annexure-1 to writ petition) and also sought a direction in the nature of ad-interim

mandamus staying the effect and operation of the judgment and order dated 22.09.2004.

The respondent No. 1 was appointed as constable in the Civil Police, Uttaranchal. A telephonic communication was received on 03.12.1999 at about 8:45 p.m. by some unknown person that the Constable was in a drunk state and making nuisance in public places near Agency Chowraha, Parui. On the information received, the then S.S.I. Sri Anand Singh Kathait who was on the round reached at the spot and found respondent No. 1 in a drunk state and creating nuisance, trouble and causing discomfort to the people. The S.S.I., Anand Singh Kathait tried to console the respondent No. 1 but of no avail. He found that the respondent No. 1 was in a state of drunk and the respondent No. 1 stated to the S.S.I. that he has purchased *Pudin Hara* from the medical store and he has consumed it to get relieve from his stomach pain. The respondent No. 1, thereafter, was taken to the police station from where he was taken to the hospital where his medical examination was conducted and he was found intoxicated by the Doctor. The respondent was suspended on 08.12.1999 for creating nuisance in public place under the influence of alcohol on the aforesaid date and time by the Superintendent of Police, Pauri Garhwal. Deputy Superintendent of Police, Pauri Garhwal was appointed as an inquiry officer in the said matter. The inquiry Officer conducted the inquiry and thereafter chargesheet was served upon the respondent No. 1 and he replied the charges

levelled against him on 10.03.2000. A preliminary inquiry was also conducted by the Incharge Inspector Police Thana Kotwali and the respondent No. –1 was found prima-facie guilty for creating nuisance in public place. The inquiry Officer after making the inquiry submitted the inquiry report on 22.02.2000 and recommended the termination of the respondent No. 1 from the services. The punishing authority after approving the findings of the Inquiry Officer issued show cause notice to the respondent. The punishing authority confirmed the proposed punishment and terminated the service of the respondent vide order dated 27.03.2000.

The respondent preferred the appeal against the dismissal order dated 27.03.2000 before the Deputy Inspector General of Police, Garhwal Range, Pauri which was also rejected on 29.06.2000.

The respondent No. 1 has also filed a revision before the Inspector General of Police, Uttaranchal, Dehradun. During the pendency of the said revision, the respondent No. 1 filed a claim petition before the Public Service Tribunal, Lucknow and after the creation of the State, the said claim petition was transferred to this court. The said revision petition filed by the respondent No. 1 was also rejected on 26.06.2001.

The tribunal vide its order dated 22nd September, 2004 confirmed the findings of the Inquiry Officer and further held that the punishment awarded was not commensurate with the misconduct committed by the respondent No. 1 as alleged in the chargesheet. The removal from the

services for a single incident is rather heavy punishment for which the other proportionate punishment would have been served ends of justice in the instant case. The order of the termination was set aside with the direction to proceed against him for alleged misconduct on 03.12.1999 and punished in proper manner except termination of the services. Further the Tribunal also held that the absence from the service during this period will be regularized as per the rules. Further no salary will be paid for the period of absence.

Feeling aggrieved by the said order passed by the Tribunal, the present writ petition has been preferred by the State Govt.

Learned counsel for the appellant contended that respondent No. 2, Tribunal had acted as an Appellate authority and as such, the Tribunal committed manifest error of law. It was further contended that the respondent No. 2 could not see as to whether the punishment awarded was sufficient or not. As such, the judgment and order is liable to be quashed. Learned counsel for the respondent refuted the contention. The learned Tribunal has held that the removal from the services for single instant was a heavy punishment. The punishing authority should have awarded other proportionate punishment which would have served the ends of justice. It was further held that the S.P., Pauri Garhwal, while awarding the punishment has also considered the past conduct of the respondent No. 1 and he should have not considered that aspect without affording him any opportunity.

It is a settled principle of law that the Tribunal cannot sit as an Appellate court and cannot go into the question of the punishment. The tribunal could only ascertain as to whether there was any illegality while holding the inquiry. The Inquiry Officer only framed charge against the respondent No. 1 on 03.12.1999 that the respondent No. 1 was in a drunk state and creating nuisance and causing discomfort to the people at public places. Inquiry Officer held him guilty. The punishing authority while awarding the punishment considered the previous conduct of the respondent No. 1 and awarded heavy punishment of removal from the services without framing any charge of his previous conduct or without affording him any opportunity of being defended. The learned Tribunal was justified in setting aside the heavy punishment awarded on the basis of his previous default. The learned Tribunal was justified in holding that the punishing authority while awarding the punishment considered the past conduct of the respondent and awarded the punishment which was not commensurate with the misconduct committed by the respondent. The Tribunal has rightly remanded the matter to decide afresh with respect to the punishment. However, this Court under Article 226 of the Constitution of India is competent to award the punishment commensurate with the misconduct committed by the respondent No. 1. The learned Tribunal has held that the Inquiry Officer had afforded full opportunity to cross-examine the witness and also to produce the evidence. The tribunal has further held that the

respondent No. 1 created the nuisance in the influence of alcohal as has been alleged by the department.

The petitioners had filed this petition before this court under Article 226 of the Constitution of India. This court is competent to see whether the punishment awarded by the punishing authority was commensurate with the misconduct committed by the respondent as alleged in the order. The respondent No. 1 had committed this offence for the first time, hence major punishment except the termination was sufficient to award for his misconduct. As such, we are of the view that the punishment awarded by the punishing authority was not proportionate punishment. It would serve the ends of justice, if two increments of the respondent No. 1 are withheld with cumulative effect. The learned Tribunal had held that the respondent No. 1 will not get the salary for the suspension period and that finding had not been challenged before us by the respondent No. 1 and that finding had become final. He will not get the salary for the period when respondent No. 1 remained suspended.

No other points were raised by learned counsel for the parties.

In view of the above, the writ petition is disposed of accordingly.

(J.C.S. RAWAT, J.) **(P.C.Verma, J.)**

8th December, 2005
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